

REMARKS/ARGUMENTS

Claims 1-23 remain in this application.

1. Allowed Claims/Subject Matter

Applicants note with appreciation that the Examiner has indicated the subject matter of claims 3, 10, and 18 are patentable, and would be allowable if rewritten in independent form.

2. § 102 Rejections

Applicants respectfully traverse the rejection of claims 1, 2, 4-7, 8, 9, 11-17, 19, 20, and 21-23 under 35 U.S.C. § 102(a) and (e) as being anticipated by U.S. Patent No. 6,522,434B1 (Jennings et al). According to the Examiner:

“Jennings et. al. 434’ teaches (Figs. 1-2) a method and optical fiber system for selecting an appropriate optical fiber type for a communications network (local or long haul) using the steps of: electronically receiving (Note that computers are used to evaluate / send the monitored information via internet or intranet) at least one technical parameter (i.e. wavelength dependent attenuation/loss values in optical fibers; fiber counts and fiber length(s) and/or network multiplexing/channel selection) associated with a proposed communications network 48(l)-48(n), 40,46,44 from a user (Customer facilities No.1, No.2, ect.) and automatically selecting an optical fiber type using switches 56, 54, monitor module 53 for comparing measured attenuations using a systems controller 60 which uses network software/internet/computer vendors, ect. for electronically providing a selected (or recommended) fiber type to a user, which clearly, fully meets Applicant’s claimed limitations.”

Anticipation of a claim under section 102 can be found only if the prior art reference discloses every element of the claim. In re King, 231 USPQ 136 (Fed Cir 1986). The Examiner indicates that the ‘434 patent discloses a technical parameter, and that technical parameter is “wavelength dependent

attenuation/loss values in optical fibers; fiber counts and fiber length(s) and/or network multiplexing/channel selection”.

First, applicants cannot find any passage within the ‘434 patent that indicates that any entity (customer, systems controller, or whatever) makes a selection or even a calculation concerning “fiber counts, fiber length(s) and/or network multiplexing/channel”. Indeed, applicants find no mention or discussion of these parameters whatsoever in the ‘434 patent. Applicants respectfully request that the Examiner point out where in the ‘434 patent indicates that these parameters are received from an end user.

With respect to “wavelength dependent attenuation/loss”, the only passage applicants can find relating to loss calculation of any kind is at column 5, lines 20-25. Note that this loss calculation is not “wavelength dependent”, nor does it indicate that the loss characteristic is attenuation. Further, contrary to the Examiner’s assertions, this loss characteristic is not electronically received from a user. Referring to column 4, lines 54-67, the light signal emanates from the optical transmitter module 52 and is transmitted through wavelength division multiplexing module 48_n, through optical fiber 44, then into second WDM module 50_n, and back through second fiber 46. The signal then returns through WDM module 48_n, then through second optical switch 56, and then on to monitor module 53. Note that at no point has the signal traveled through or had any interaction with either of the customers No. 1 or No. 2. Yet, as explained at column 5, lines 21-25, by comparing the light signal received by the monitor module 53 to the light signal which was transmitted, the system controller 60 calculates the loss characteristics of the optical fiber being tested. Thus, it is clear that the loss characteristics are calculated without any input whatsoever from customer facilities No. 1 or No. 2. Consequently, it is clear that the loss characteristic is not received from an end user, as is required by claim 1.

Applicants also disagree with and indeed do not understand the Examiner’s comment that the term “recommended” can have no patentable significance over a fiber that is “provided”. Again, anticipation of a claim under section 102 can be found only if the prior art reference discloses every element of the claim. In re King, 231 USPQ 136 (Fed Cir 1986). The Examiner appears to agree that the ‘434 patent

does not disclose "recommending", and as far as applicants are aware, that is all that is necessary to overcome a 102 rejection, i.e., there is no requirement under section 102 that not only must elements of a claim be missing, they must also be patentably significant over the prior art.

Further, these two terms clearly have different defined meanings, as illustrated by the attached definitions taken from The American Heritage Dictionary. Recommend is defined as "to praise or commend to another as being worthy or desirable", while provide is defined as "to furnish or supply". Thus for example, a recommendation of a certain optical fiber does not necessarily mean that the optical fiber is even be obtained, whereas providing an optical fiber to an end user clearly does mean that the optical fiber would be obtained (and supplied) to the end user. Similarly, the attenuation as defined by applicants' claims requires electronically receiving a technical parameter which is associated with a proposed communication network.

Based upon the above amendments, remarks, and papers of records, applicant believes the pending claims of the above-captioned application are in allowable form and patentable over the prior art of record. Applicants respectfully request that a timely Notice of Allowance be issued in this case.

Applicant believes that no extension of time is necessary to make this Reply timely. Should applicant be in error, applicant respectfully requests that the Office grant such time extension pursuant to 37 C.F.R. § 1.136(a) as necessary to make this Reply timely, and hereby authorizes the Office to charge any necessary fee or surcharge with respect to said time extension to the deposit account of the undersigned firm of attorneys, Deposit Account 03-3325.

Please direct any questions or comments to Robert L. Carlson at 607-974-3502.

Respectfully submitted,



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